Testimony before the MI House Tax Policy Committee – Sept 11 2013

Compuware Corporation, headquartered in Detroit, is the largest high-tech company based in Michigan. With more than 1900 employees in the state and over 4400 worldwide, Compuware solutions make the world's most important technologies perform at their best for leading organizations worldwide, including 46 of the top 50 Fortune 500 companies and 12 of the top 20 most visited U.S. web sites.

Covisint Corporation a wholly-owned subsidiary of Compuware, provides various industry specific cloud computing services to customers with a global presence in the automotive, healthcare and energy industries.

What was, for years, commonly known as a "hosted service", which has not been subject to sales tax by the Michigan Dept. of Treasury, is now commonly known as Cloud computing. The underlying service hasn't changed just the buzzword of how it's referred to.

Cloud Computing has become a common catchall phrase to cover a broad umbrella of items... Platform as a Service, Software as a Service, Infrastructure as a Service, digital goods, portal access, authentication, messaging, photos, music, web browsers, etc..... It doesn't accurately address the underlying service that the customer receives.

To keep IT costs down and streamline operations, Cloud-based processes are becoming fundamental to organizations' business models. Projects that would take a significant amount of time and cost, if a customer was required to purchase hardware, and needed employees to develop programs, now could be processed in the cloud at a fraction of both the cost & time These cloud-based processes require a high degree of security, reliability and scalability.

Under a SaaS model, the customer does not enter into a license for pre-written computer software but are subscribing to a service. The customer does not expect any delivery of software and continued use of the service is dependent on payment by the customer. By comparison, *under a perpetual software license the software is <u>delivered</u> to the customer, either tangibly or electronically, and the customer maintains use of the software behind their firewall, even if they stop paying the vendor for the subsequent maintenance fees.* Under the SaaS model, the customer receives NO delivery of the software and the access to the service stops once the customer stops paying for the service. *There is no expectation that the customer will, at the end of the day, have a license for pre-written computer software.*

The question is whether the customer maintains any rights to, or control of, the software. Under a true SaaS model, the customer doesn't have control of the software as if they had it installed behind their firewall. Instead, the customer has access to a "presentation layer" of the service, which could be a mobile app or a web site to view or publish data or content. They do not have direct access to view, access, administer, configure or delete the underlying software, which remains under control of the vendor. Additionally, the data or content the customer views at the "presentation layer" may be specific to them only and may not be available for view (or use) by another customer.

Additionally, one of the benefits of cloud computing is the ability of the vendor to pool computing resources and reassign virtual resources according to customer demand. As such the consumer may have no control or knowledge of the exact location of the vendor's server or which server they are accessing.

Forrester's report, "Sizing the Cloud", predicts that the global market for cloud computing — *including the public cloud, the private cloud and the virtual private cloud* — will leap from $40.7 billion in 2011 to more than $241 billion in 2020. The SaaS piece of this alone will jump from $21B in 2011 to $93B in 2016.

It has been several years since a Michigan technology company has done an Initial Public Offering. Our subsidiary, Covisint is in the process of doing an IPO. The clarity of taxing SaaS is important not just for the company, but also for their customer base.

If the long term goal of Michigan is to attract more businesses (and business sectors) to the state, why take a piece of economic development off the table and make it more convoluted? California, which is the hub for various sectors of technology companies does not currently apply sales tax to SaaS services. Applying tax to SaaS services creates an uncompetitive disadvantage to Michigan vendors. Additionally, taxing SaaS or leaving tax uncertainty around these services could cause Covisint or other technology companies to leave the state for a more taxpayer friendly environment.

The short term loss in revenue for taxing SaaS would be small compared to the amount of revenue the state could make in the future if they could bring more technology vendors to the state. Applying sales tax to a true service is outside the Michigan sales and use tax statutes.

Furthermore, applying sales tax at the billing address or HQ level is inequitable, as in the global market, users could reside anywhere in the world. As a vendor of these types of services, we don't know where the customer's users are located.